

APPENDIX: B



Terry Tamminen
Agency Secretary
Cal/EPA



Department of Toxic Substances Control

Edwin F. Lowry, Director
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721



Arnold Schwarzenegger
Governor

December 16, 2003

Mr. Troy Fujimoto
City of Milpitas
Planning Division
455 East Calaveras Boulevard
Milpitas, California 95035-5479

Dear Mr. Fujimoto:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the Elmwood Residential and Commercial Development Project (SCH # not available) draft Environmental Impact Report (EIR). As you may be aware, the California Department of Toxic Substances Control (DTSC) oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a Responsible Agency, DTSC is submitting comments to ensure that the environmental documentation prepared for this project to address the California Environmental Quality Act (CEQA) adequately addresses any remediation of hazardous substance releases that may be necessary.

Page 4 of the NOP indicates that since the site was used primarily for agricultural purposes, between 1939 through 1970, that potential exists for environmental impacts to soil and/or groundwater. DTSC recommends sampling should occur in conjunction with the preparation of the EIR so that appropriate remedial measures can be identified and any associated impacts can be discussed in the EIR.

DTSC can assist your agency in overseeing characterization and cleanup activities through our Voluntary Cleanup Program. A fact sheet describing this program is enclosed. We are aware that projects such as this one are typically on a compressed schedule, and in an effort to use the available review time efficiently, we request that DTSC be included in any meetings where issues relevant to our statutory authority are discussed.

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CITY OF MILPITAS

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Mr. Troy Fujimoto
December 16, 2003
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Please contact Claude Jemison of my staff at (510) 540-3803 if you have any questions or would like to schedule a meeting. Thank you in advance for your cooperation in this matter.

Sincerely,



Mark E. Piros, P.E.
Unit Chief
Northern California Coastal
Cleanup Operations Branch

Enclosure

cc: without enclosure

Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044

Guenther Moskat
CEQA Tracking Center
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

California Environmental Protection Agency



DEPARTMENT OF TOXIC SUBSTANCES CONTROL

The Voluntary Cleanup Program

In 1993, the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) introduced this streamlined program to protect human health and the environment, ensure investigation and cleanup is conducted in an environmentally sound manner and facilitate the reuse and redevelopment of these same properties. Using this program, corporations, real estate developers, other private parties, and local and state agencies entering into Voluntary Cleanup Program agreements will be able to restore properties quickly and efficiently, rather than having their projects compete for DTSC's limited resources with other lower-priority hazardous waste sites. This fact sheet describes how the Voluntary Cleanup Program works.

Prior to initiation of the Voluntary Cleanup Program, project proponents had few options for DTSC involvement in cleaning up low-priority sites. DTSC's statutory mandate is to identify, prioritize, investigate and cleanup sites where releases of hazardous substances have occurred. For years, the mandate meant that, if the site presented grave threat to public health or the environment, then it was listed on the State Superfund list and the parties responsible conducted the cleanup under an enforcement order, or DTSC used state funds to do so. Because of staff resource limitations, DTSC was unable to provide oversight at sites which posed lesser risk or had lower priority.

DTSC long ago recognized that no one's interests are served by leaving sites contaminated and unusable. The Voluntary Cleanup Program allows motivated parties who are able to fund the cleanup – and DTSC's oversight – to move ahead at their own speed to investigate and remediate their sites. DTSC has found that working cooperatively with willing and able project proponents is a more efficient and cost-effective approach to site investigation and cleanup. There are four steps to this process:

- ✓ Eligibility and Application
- ✓ Negotiating the Agreement
- ✓ Site Activities
- ✓ Certification and Property Restoration

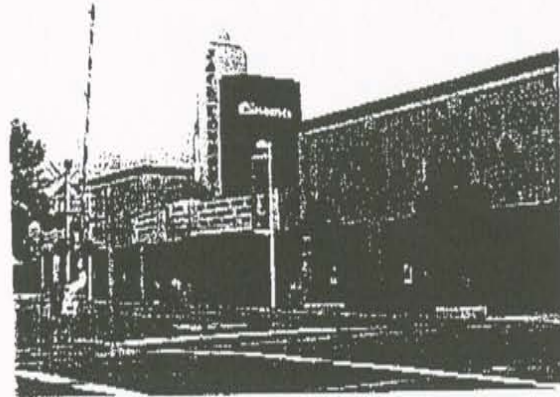
The rest of this fact sheet describes those steps and gives DTSC contacts.

August 1999

The Voluntary Cleanup Program

Step 1: Eligibility and Application

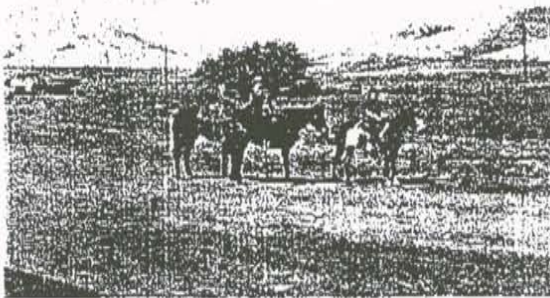
Most sites are eligible. The main exclusions are if the site is listed as a Federal or State Superfund site, is a military facility, or if it falls outside of DTSC's jurisdiction, as in the case where a site contains only leaking underground fuel tanks. Another possible limitation is if another agency currently has oversight, e.g. a county (for underground storage tanks). The current oversight agency must consent to transfer the cleanup responsibilities to DTSC before the proponent can enter into a Voluntary Cleanup Program agreement. Additionally, DTSC can enter into an agreement to work on a specified element of a cleanup (risk assessment or public participation, for example), if the primary oversight agency gives its consent. The standard application is attached to this fact sheet.



Jack London Square Theater, Oakland:
Under the Voluntary Cleanup Program, a nine-screen theater was built atop a former Pacific Gas & Electric town gas site, creating a regional entertainment hub.

If neither of these exclusions apply, the proponent submits an application to DTSC, providing details about site conditions, proposed land use and potential community concerns. No fee is required to apply for the Voluntary Cleanup Program.

Step 2: Negotiating the Agreement



Romero Ranch, Santa Nella: A Voluntary Cleanup Agreement enabled the Nature Conservancy to use the land to preserve natural habitat and promote wildlife development rights.

Once DTSC accepts the application, the proponent meets with experienced DTSC professionals to negotiate the agreement. The agreement can range from services for an initial site assessment, to oversight and certification of a full site cleanup, based on the proponent's financial and scheduling objectives.

The Voluntary Cleanup Program agreement specifies the estimated DTSC costs, project scheduling, and DTSC services provided. Because every project must meet the same legal and technical cleanup requirements as State Superfund sites, and because DTSC staff provide oversight, the proponent is assured that the project will be completed in an environmentally sound manner.

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CITY OF MILPITAS

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CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
SITE MITIGATION STATEWIDE CLEANUP OPERATIONS



VOLUNTARY CLEANUP PROGRAM APPLICATION

The purpose of this application is to obtain information necessary to determine the eligibility of the site for acceptance into the Voluntary Cleanup Program. Please use additional pages, as necessary, to complete your responses.

SECTION 1 PROPONENT INFORMATION

SECTION 1 PROONENT INFORMATION	
Proponent Name	
Principal Contact Name	Phone ()
Address	
Proponent's relationship to site	
Brief statement of why the proponent is interested in DTSC services related to site	

SECTION 2 SITE INFORMATION

SECTION 2		SITE INFORMATION	
Is this site listed on Calsites?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If Yes, provide specific name and number as listed			
Name of Site			
Address			
City		County	ZIP
(Please attach a copy of an appropriate map page)			

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CITY OF MILPITAS

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SECTION 2 SITE INFORMATION (continued)**Current Owner**

Name _____

Address _____

Phone () _____

Background: Previous Business Operations

Name _____

Type _____

Years of Operation _____

If known, list all previous businesses operating on this property

What hazardous substances/wastes have been associated with the site?

What environmental media is/was/may be contaminated?

☐ Soil☐ Air☐ Groundwater☐ Surface waterHas sampling or other investigation been conducted? ☐ Yes ☐ No

Specify

If Yes, what hazardous substances have been detected and what were their maximum concentrations?

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SECTION 2 SITE INFORMATION (continued)

Are any Federal, State or Local regulatory agencies currently involved with the site? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, state the involvement, and give contact names and telephone numbers			
Agency	Involvement	Contact Name	Phone

What is the future proposed use of the site?

What oversight service is being requested of the Department?

☐ PEA ☐ RI/FS ☐ Removal Action ☐ Remedial Action ☐ RAP ☐ Certification

☐ Other (describe the proposed project)

Is there currently a potential of exposure of the community or workers to hazardous substances at the site?

☐ Yes ☐ No If Yes, explain

SECTION 3 COMMUNITY PROFILE INFORMATION

Describe the site property (include approximate size)

Describe the surrounding land use (including proximity to residential housing, schools, churches, etc.)

Describe the visibility of activities on the site to neighbors

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SECTION 3 COMMUNITY PROFILE INFORMATION (continued)

What are the demographics of the community (e.g., socioeconomic level, ethnic composition, specific language considerations, etc.)?

Local Interest

Has there been any media coverage?

Past Public Involvement

Has there been any past public interest in the site as reflected by community meetings, ad hoc committees, workshops, fact sheets, newsletters, etc.?

Key Issues and Concerns

Have any specific concerns/issues been raised by the community regarding past operations or present activities at the site?

Are there any concerns/issues anticipated regarding site activities?

Are there any general environmental concerns/issues in the community relative to neighboring sites?

Key Contacts

Please attach a list of key contacts for this site, including: city manager; city planning department; county environmental health department, local elected officials; and any other community members interested in the site. (Please include addresses and phone numbers.)

SECTION 4 CERTIFICATION

The signatories below are authorized representatives of the Project Proponent and certify that the preceding information is true to the best of their knowledge.

Proponent Representative

Date

Title

In the agreement, DTSC retains its authority to take enforcement action, if, during the investigation or cleanup, it determines that the site presents a serious health threat, and proper and timely action is not otherwise being taken. The agreement also allows the project proponent to terminate the Voluntary Cleanup Program agreement with 30 days written notice if they are not satisfied that it is meeting their needs.

Step 3: Site Activities

Prior to beginning any work, the proponent must have: signed the Voluntary Cleanup Program agreement; made the advance payment; and committed to paying all project costs, including those associated with DTSC's oversight. The project manager will track the project to make sure that DTSC is on schedule and within budget. DTSC will bill its costs quarterly so that large, unexpected balances should not occur.

Once the proponent and DTSC have entered into a Voluntary Cleanup Program agreement, initial site assessment, site investigation or cleanup activities may begin. The proponent will find that DTSC's staff includes experts in every vital area. The assigned project manager is either a highly qualified Hazardous Substances Scientist or Hazardous Substances Engineer. That project manager has the support of well-trained DTSC toxicologists, geologists, engineers, industrial hygienists, specialists in public participation, and other technical experts.

The project manager may call on any of these specialists to join the team, providing guidance, review, comment and, as necessary, approval of individual documents and other work products. That team will also coordinate with other agencies, as appropriate, and will offer assistance in complying with other laws as needed to complete the project.

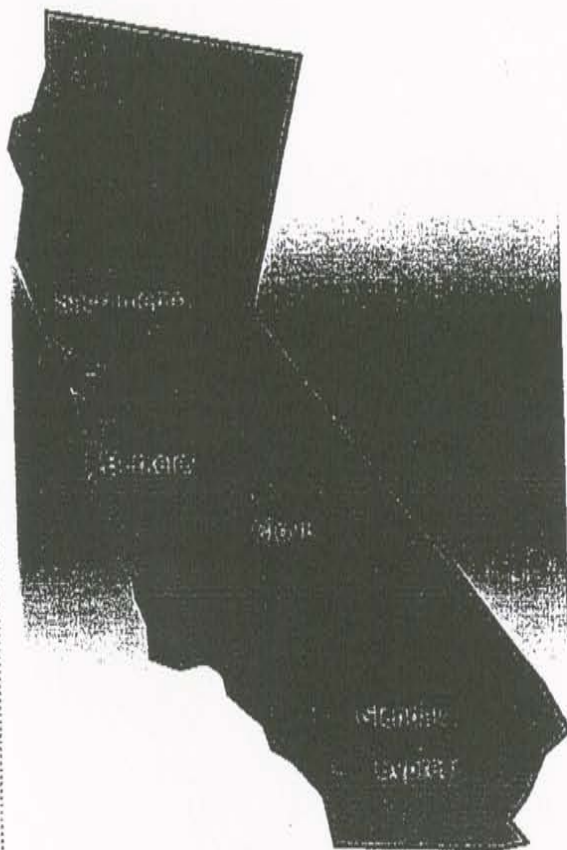


The new Federal Courthouse, Sacramento: The largest construction project in the city's history benefited from the Voluntary Cleanup Program when cleaning up a railyard site.

Step 4: Certification and Property Restoration

When remediation is complete, DTSC will issue either a site certification of completion or a "No Further Action" letter, depending on the project circumstances. Either means that what was "The Site," is now property that is ready for redevelopment or other reuse.

To learn more about the Voluntary Cleanup Program, contact the DTSC representative in the Regional office nearest you:



DTSC office locations

North Coast California

Lynn Nakashima / Janet Naito
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721
(510) 540-3839 / (510) 540-3833

Central California

Megan Cambridge
10151 Croydon Way, Suite 3
Sacramento, California 95827
(916) 255-3727

**Central California –
Fresno Satellite**

Tom Kovac
1515 Tollhouse Road
Clovis, California 93611
(209) 297-3939

**Southern California
(Glendale and Cypress)**

Rick Jones
1011 Grandview Avenue
Glendale, California 91201
(818) 551-2862

Additional information on the Voluntary Cleanup Program and other DTSC Brownfields initiatives is available on DTSC's internet web page:

<http://www.dtsc.ca.gov>

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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER Governor

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5505
FAX (510) 286-5513
TTY (800) 735-2929



*Flex your power!
Be energy efficient!*

December 16, 2003

SCL-880-7.69
SCL880218
SCH 2003112102

Mr. Troy Fujimoto
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035-5479

Dear Mr. Fujimoto:

Proposed Elmwood Residential and Commercial Development Project – Notice of Preparation (NOP)

Thank you for including the California Department of Transportation (Department) in the environmental review process for the proposed project. We have examined the above-referenced document and our comments are as follows:

- A Traffic Impact Study (TIS) should be prepared to assess the project's impacts to Interstate 880 (I-880) and the Great Mall Parkway Interchange. The "Guide for the Preparation of Traffic Impact Studies" can be found at: <http://www.dot.ca.gov/hq/traffops/developserv/operationalsystemcs/reports/tisguide.pdf>, and can be used as reference.
- The TIS should incorporate the following scenarios:
 - Existing conditions without the project
 - Existing conditions plus the project
 - Cumulative conditions (without the project)
 - Cumulative conditions (with project build-out)
- The TIS should also include a discussion of transit access and proposed rider-ship. Justification for transit credits should be supported with study documentation.
- The TIS should provide a Level of Service (LOS) analysis for freeways, ramps, and ramp terminal intersections. A merge/diverge analysis should be performed for freeway and ramp junctions and all analysis should be based on AM and PM peak hour volumes. The analysis should include the (individual, not averaged) LOS and traffic volumes applicable to all intersection road approaches and turn movements. The procedures contained in the 1997 update to the Highway Capacity Manual along with the Guide for the Preparation of Traffic Impact Studies should be used as a guide for the TIS.

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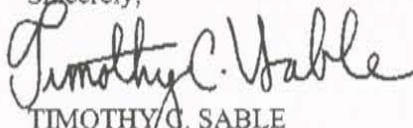
- Mitigation measures should be identified where the project would have a significant impact. The Department considers the following to be significant impacts:
 - Off-ramps with vehicle queues that extend into the ramp's deceleration area or onto the freeway.
 - Vehicle queues at the intersections that exceed existing lane storage.
 - Project traffic impacts that cause any ramp's merge/diverge Level of Service (LOS) to be worse than the freeway's LOS.
 - Project impacts that cause the freeway or intersection LOS to deteriorate beyond LOS E for freeway and LOS D for highway and intersections. If the LOS is already "E" or "F", then a quantitative measure of increased queue lengths and delay should be used to determine appropriate mitigation measures.
- The analysis of the future traffic impacts should be based on a 20 year planning horizon

We look forward to reviewing the Draft Environmental Impact Report for this project. We expect to receive a copy from the State Clearinghouse; to expedite our review please send one digital and three hard copies in advance to:

Tom Holley
Office of Transit and Community Planning
Department of Transportation, District 4
P.O. Box 23660
Oakland, CA 94623-0660

Should you require further information or have any questions regarding this letter, please call Tom Holley, of my staff at (510) 622-8706.

Sincerely,



TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: Scott Morgan (State Clearinghouse)

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CITY OF MILPITAS

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TEL: (408) 266-0244 FAX: (408) 266-0245
V.O. (408) 266-0244 TOLL FREE: 800-368-3636
HOURS: (408) 266-2607
FACSIMILE (408) 266-0244
www.valleywater.org
E-MAIL: info@valleywater.org

File: 25919
Lower Penitencia Creek

December 12, 2003

Mr. Troy Fujimoto
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5479

Subject: Notice of Preparation of a Draft Environmental Impact Report for the Proposed
Elmwood Residential and Commercial Development Project

Dear Mr. Fujimoto:

The Santa Clara Valley Water District (District) has reviewed the notice of preparation for the Elmwood site, received on November 17, 2003.

District comments remain the same as in our comment letter dated August 19, 2003, enclosed.

However, the existing Federal Insurance Rate Map (FIRM) does not accurately reflect current conditions on the site. A revised floodplain map which accurately reflects existing baseline conditions needs to be developed as part of the Draft Environmental Impact Report (DEIR). The District would like to meet with the City of Milpitas representatives to discuss this item prior to finalizing the Administrative Draft of the EIR.

Please submit two sets of improvement plans when available for our review and issuance of a permit. The submittal shall include grading and drainage, fencing, landscape, and irrigation plans.

Please reference File No. 25919 on further correspondence regarding the project.

Should you have any questions, please give me a call at (408) 265-2607, extension 2494, or email me at THipol@valleywater.org.

Sincerely,

Theodore Hipol
Assistant Engineer
Community Projects Review Unit

Enclosure: Letter Dated August 19, 2003

cc: Mr. Mike McNeely, City of Milpitas
S. Tippetts, S. Yung, T. Hipol, V. Stephens, M. Klemencic, C. Fredrickson, S. Katric,
T. O'Loughlin, File (2)

eh:jl
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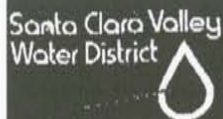


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CITY OF MILPITAS

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5750 ALMADEN EXPWY
SAN JOSE, CA 95118-3686
TELEPHONE (408) 265-2600
FACSIMILE (408) 266-0271
www.valleywater.org
AN EQUAL OPPORTUNITY EMPLOYER

File: 25919
Lower Penitencia Creek

August 19, 2003

Mr. Troy Fujimoto
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5479

Subject: Tentative Map for the Elmwood 343-Lot Split

Dear Mr. Fujimoto:

The Santa Clara Valley Water District (District) has reviewed tentative map for the subject project, received on July 16, 2003.

Lower Penitencia Creek, a District flood facility, is located along the west side of South Abel Street.

In accordance with District Ordinance 83-2, any plans for construction over or adjacent to District facilities should be sent to us for review and issuance of a permit.

Current Federal Emergency Management Agency Flood Insurance Rate Maps (enclosed) show that the majority of the project site, west of South Abel Street, is in Zone AO, subject to flooding to a depth of 2 feet. A section of the project site east of South Abel Street is in Zone AO, subject to flooding to a depth of 1 foot, while the remainder of that project site is in Zone X, an area subject to less than 1 foot of flooding in the event of a 1 percent flood. To comply with federal flood insurance regulations, the lowest floor and the highest adjacent grade of any proposed building must be above the 1 percent water surface elevation. We recommend the lowest floor be a minimum of 2 feet above the 1 percent water surface elevation.

There should be no overbank drainage from the developed portions of the site into the creek. Storm water runoff should be collected and distributed to the city's storm drain system. If an outfall into the creek is needed, the number of outfalls should be minimized and designed in accordance with District guide sheets.

In addition, the proposed development within the existing floodplain should not increase the 100-year water surface elevation on surrounding properties nor should it increase existing flooding. The site grades must be designed to allow for the passage and storage of flood water within the site. A floodplain analysis will need to be prepared to delineate the postdevelopment floodplain depth and lateral extent.

ENCLOSURE



Mr. Troy Fujimoto
Page 2
August 19, 2003

To prevent pollutants from construction activity, including sediments, from reaching Lower Penitencia Creek, please follow the Santa Clara Urban Runoff Pollution Prevention Program's recommended Best Management Practices for construction activities, as contained in "Blueprint for a Clean Bay," and the "California Storm Water Best Management Practice Handbook for Construction."

Postconstruction water quality mitigation needs to be implemented. The design of the project area should incorporate water quality mitigation measures such as those found in the "Start at the Source-Design Guidance Manual for Stormwater Quality Protection," prepared for the Bay Area Stormwater Management Agencies Association.

For sites greater than 1 acre, the developer must file a Notice of Intent to comply with the State's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Construction Activity with the State Water Resources Control Board.

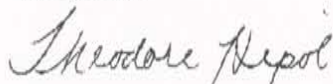
District records show four wells on the sites. In accordance with the District Ordinance 90-1, the owner should show any existing well(s) on the plans. The well(s) should be properly maintained or abandoned in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or abandonment of any wells.

When available, please submit the associated environmental documents for our review and comment.

Please reference File No. 25919 on further correspondence regarding the project.

Should you have any questions, please give me a call at (408) 265-2607, extension 2494, or e-mail me at THipol@valleywater.org.

Sincerely,



Theodore Hipol
Assistant Engineer
Community Projects Review Unit

Enclosures: Federal Emergency Management Agency Map
cc: S. Tippets, S. Yung, T. Hipol, M. Klemencic, C. Fredrickson, File (2)
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CITY OF MILPITAS
ENVIRON ANALYSIS

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December 17, 2003

City of Milpitas
Redevelopment Agency
455 E. Calaveras Blvd.
Milpitas, CA 95035

Attention: Troy Fujimoto

Subject: City File No.: P-EA2003-7 / Elmwood Residential and Commercial Development

Dear Mr. Fujimoto:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the NOP for a Draft EIR to subdivide 102.62 gross acres to allow 721 residential units and 150,000 square feet of automobile sales at a site located east of I-880, south of Sylvia Avenue, both sides of Abel Street, and north of Great Mall Parkway. We have the following comments.

Transit Service

The Draft EIR should consider existing and future transit service provided by VTA to the project area. In addition, VTA would like to review the Draft EIR and future plans for this site in order to make recommendations for potential transit service to the project site.

Bicycle Parking

Based on VTA's *Bicycle Technical Guidelines*, VTA recommends that the project include 35 Class I bicycle parking spaces, such as bike lockers or a guarded/locked shed for the 104 rental residential units. Seven Class II spaces, such as bicycle racks, are recommended for short-term bike parking for visitors to the rental units. The Class II bicycle racks should be located in a visible location within 50 feet of building entrances. For the auto sales part of the development, there should be at least one Class I bicycle parking space per 30 employees.

The *Bicycle Technical Guidelines* provide additional guidance on estimating siting and design for bicycle storage facilities. The *Bicycle Technical Guidelines* may be downloaded from www.vta.org/news/vtacmp/Bikes/ (Adobe Reader is required) or contact Celia Chung at (408) 321-5725 for a copy of these guidelines.

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CITY OF MILPITAS
ENVIRON ANALYSIS

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Development Design

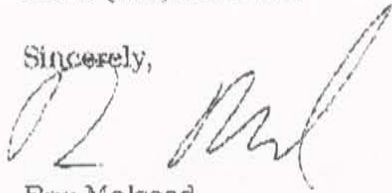
VTA's *Community Design & Transportation (CDT) Guidelines* should be used when designing this development. This document provides guidance on site planning, building design, street design, preferred pedestrian environment, intersection design and parking requirements. The *CDT Guidelines* are available upon request to any agency staff. For more information on *CDT Guidelines*, please call Chris Augenstein of the CMP at 408-321-5725.

Transportation Impact Analysis Report

VTA's Congestion Management Program (CMP) requires a Transportation Impact Analysis for any project that is expected to generate 100 or more new peak-hour trips. Based on the information provided on the size of the project, a TIA may be required.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Roy Molseed', is written over the word 'Sincerely,'.

Roy Molseed
Senior Environmental Planner

RM:kh

cc: Samantha Swan, VTA
E-mail: Samantha.Swan@vta.org

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CITY OF MILPITAS

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BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY

Roberta Cooper
Scott Haggerty
(Chairperson)
Nate Milley
Shelia Young

CONTRA COSTA COUNTY

Mark DeSaulnier
Mark Ross
Gayle Ullkema
(Secretary)

MARIN COUNTY

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Brad Wagenknecht

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Jake McGoldrick

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Patrick Kwok
Julia Miller
Dena Mossar

SOLANO COUNTY

John F. Silva

SONOMA COUNTY

Tim Smith
Pamela Torliatt

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

December 11, 2003

Troy Fujimoto
Planning Division
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5479

Subject: Elmwood Residential and Commercial Development

Dear Mr. Fujimoto:

Bay Area Air Quality Management District (District) staff have received your agency's Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Elmwood Residential and Commercial Development project. The project proposes the subdivision of a 102-acre site within the City's Midtown Specific Plan area that would allow for the development of 721 residential units on approximately 31 acres of the site; 150,000 square feet of auto sales on the 22.5 acres fronting I-880; and 3 acres of parks and trails.

District staff agree with the NOP's conclusion that the DEIR should include the analysis of the project's potential impacts upon air quality. The Bay Area is currently a non-attainment area for federal and state ambient air quality standards for ground level ozone and state standards for particulate matter. The air quality standards are set at levels to protect public health and welfare. As general background for readers, the DEIR should provide quantitative summaries of the region's attainment status with regard to ambient air quality standards, discuss the health effects of air pollution, and identify the contribution of mobile and stationary sources to air pollution emissions.

The DEIR should also include the analysis of the potential impact on air quality from project construction and project operation at buildout. Without mitigation, a project of this size is likely to have significant air quality impacts through an increase in motor vehicle traffic. Motor vehicles constitute the largest source of air pollution in the Bay Area, and automobile use associated with this project may exacerbate this air quality problem.

The DEIR should also evaluate potential nuisance impacts, such as odors and dust that could result from project implementation. Odors may not necessarily cause physical harm, but can still be unpleasant and can motivate citizen complaints. Particulate matter (PM) is a pollutant of concern for both nuisance and health-related reasons. PM larger than ten microns diameter is more likely to be a public nuisance than a serious health hazard. On the other hand, research has demonstrated a correlation among high levels of fine PM, increased mortality rates, and high incidences of chronic respiratory illness. The DEIR should evaluate such impacts and propose appropriate mitigation measures.

Mr. Troy Fujimoto

-2-

December 11, 2003

We urge the City to require the project sponsors to implement measures to minimize vehicle trips and air pollutant emissions, such as air quality beneficial land use/site design, as well as improved transit and bicycle/pedestrian access. In particular, the City should consider the orientation of future residential development so that the highest density housing is located along the Great Mall Parkway and other parts of the project area that are within walking distance of existing or future transit service. We support the City's current land use designation of *Very High Density Residential* (31-40 dwelling units per acre) because higher residential densities are better able to support mass transit. Higher density housing near bus and light rail routes will allow more residents to access transit service in this part of Milpitas.

Since motor vehicles constitute the largest source of air pollution in the Bay Area, the District has a strong interest in promoting alternative modes of transportation. Currently, there are at least five existing Santa Clara Valley Transportation Authority (VTA) bus routes as well as the I-880/Milpitas Tasman West light rail station within walking distance of the project area. The City should work with project sponsors and VTA to ensure that there is adequate pedestrian and bicycle linkages between the project area and all existing and future transit nodes, including the two possible future BART stations in Milpitas.

The plan should also include neighborhood-serving commercial uses interspersed among the residential uses. These neighborhood-serving commercial uses should be within close proximity to residences, and those uses should be convenient and safe for pedestrians and bicyclists to access. If shops, schools, parks and other community services are within walking or biking distance from homes, residents will be less likely to drive, thereby reducing the air quality impacts of the development.

We were encouraged that the project description states that the plan will consider bicycle, transit and pedestrian circulation and access. We are supportive of efforts by the project sponsors to include bicycle and pedestrian facilities in the project as well as linkages between the project area and any existing or proposed local and/or regional pedestrian/bicycle networks. We encourage the City to make land use decisions that support transit, walking and cycling, in order to reduce the rate of increase in vehicle miles traveled and to improve local and regional air quality.

For more details on our agency's guidance regarding environmental review, we recommend that the City refer to the *BAAQMD CEQA Guidelines: Assessing the Air Quality Impacts of Projects and Plans (1999)*. The document provides information on best practices for assessing and mitigating air quality impacts related to projects and plans, including construction emissions, land use/design measures, project operations, motor vehicles, and nuisance impacts. If you do not already have a copy of our guidelines, we recommend that you obtain it by calling our Public Information Division at (415) 749-4900 or download the online version from the District's web site at <http://www.baaqmd.gov/pln/CEQA/ceqaguide.asp>.

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CITY OF MILPITAS

PAGE 21

Mr. Troy Fujimoto

-3-

December 11, 2003

If you have any questions regarding these comments, please contact Suzanne Bourguignon, Environmental Planner, at (415) 749-5093.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack P. Broadbent". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jack P. Broadbent
Executive Officer/APCO

JB:SB

cc: BAAQMD Director Liz Kniss
BAAQMD Director Patrick Kwok
BAAQMD Director Julia Miller
BAAQMD Director Dena Mossar

UNDERVALUED STOCKS

Would you pay \$1.16 per share for a company with an existing inferred value of over \$7.00 per share?

As savvy investors rapidly buy up this stock, it has become clear that this could be one of the most explosive opportunities of the year. You still have the opportunity to buy this stock for pennies on the dollar – but for how long? We are convinced **THIS IS JUST THE BEGINNING!**

Company: Capital Hill Gold, Inc. **Stock Symbol OTCBB:** CAGI
Recommendation: STRONG BUY **Recent Price:** \$1.16
Website: www.capitalhillgold.com

At Undervalued Stocks, we don't get excited about many stocks. That's because it's getting harder and harder to find stocks that have the potential to make investors rich very quickly. Blue Chips can't and IPOs rarely pay off for small investors. History shows that the only consistent way for small investors to see their money double, triple or more in the short run is to be smart enough to find small caps with huge potential and buy in before they take off – the kind of stocks that get us excited and could make you rich.

The stock that has us so excited right now is that of a little known company with a HUGE upside potential. Better yet, if it lives up to just a fraction of its potential, those who get in now could end up cashing out big very soon!

The potentially undervalued company we are talking about is Capital Hill Gold (OTCBB: CAGI), a junior gold company with mining rights to what many industry insiders are calling one of the most underdeveloped and exciting gold projects in the region. Our enthusiasm over this sensational opportunity is growing rapidly, and price and volume increases in the shares of the company prove that early investors that have done their own research are as excited as we are.

CAGI was formed specifically to tap the enormous anticipated gold reserves under the "Mexican Hat", an unusual volcanic dome formation in Arizona. Based on historical work documented by Placer Dome, the world's third largest gold mining company, there are existing inferred reserves on the "Mexican Hat" of up to 360,000 oz. of gold worth at today's prices up to \$144 Million. This equates to a value of over \$7.00 per share! Smart investors are taking action. With only a little over 20 million shares outstanding, and the majority of those under restriction and held in the hands of company insiders, this stock may explode when the word gets out. How much longer this company can stay below the radar screen of the major institutional gold investors remains to be seen, but with gold prices at near record levels, and with more results to come and the shares trading at only \$1.16, this stock has the potential to double again and again!

Will everything happen as expected? We can't say for sure, but all indications are that gold prices have not come anywhere close to topping out and the highly experienced management team at CAGI, with decades of mining experience on several continents thinks that the Mexican Hat mine will be a bonanza for everyone involved.

All smart investors know that it is easier to have a \$1 stock go to \$5 than a \$10 stock to go to \$50. An undervalued stock with the explosive upside potential of CAGI can do just that and much more for savvy investors. Now is the time to act if you really want to take advantage of this unique situation – jittery stock market, soaring gold prices and huge untapped potential form what could be the best gold stock play to come along in decades.

But the word is getting out. Chances like this are few and far between and the buzz on the street is that CAGI is a BUY! Who knows when you'll have another chance to turn such a huge profit again? Smart investors strike when the iron's hot and with CAGI, it's SIZZLING!

For more information, simply send us an email at info@stocks-info.com and we will send you back a comprehensive report.
If you have received this fax in error & would like to be removed from our list permanently please dial 800.505.3116

Forward-looking statements contained in this newsletter are made under the Safe Harbor Provision of the Private Securities Litigation Reform Act of 1995. Any such statements are subject to risks and uncertainties that could cause actual results of events to differ materially from those anticipated in such forward looking statements. Undervalued Stocks has received two hundred nineteen thousand, nine hundred sixty five dollars from Waterfall International Ltd. (WIL) for the production and distribution of this newsletter. WIL may own a non-controlling share of CAGI and reserves the right to sell their shares at any time without prior notice. This profile is not an offer to buy or sell any securities mentioned herein. While the publisher believes all sources of information to be factual and reliable, in no way does it represent or guarantee the accuracy thereof, nor the statements made herein and have made no independent verification of the facts, assumptions and estimates contained in this newsletter. The user assumes all risk as to the accuracy and the use of this document. Always consult a professional investment advisor before making any purchase. For further details concerning risks and uncertainties, please request additional information directly from the company featured above or the SEC filings of the company including the company's most recent annual and quarterly reports.

City of Milpitas

Planning Division

455 E. Calaveras Blvd.

Milpitas, CA 95035

ZONING/PLANNING INFO: (408) 586-3279

FAX (408) 586-3293

(408) 586-3287

tfujimoto@ci.milpitas.ca.gov

FAX FAX FAX FAX

DATE:	September 3, 2004
TO:	Joann Lombardo
FAX:	949-548-6981
CC:	
NO. OF PAGES:	(including cover sheet)
FROM:	Troy Fujimoto, Acting Associate Planner
SUBJECT:	NOP Responses and responses from service providers with tentative distribution
NOTES:	Joann, just as an FYI, not sure what your plans were considering the compressed time schedule, but we were hoping that we could get a copy of the completed Draft EIR prior (at least one day prior) to the review period starting.

Please contact me with any questions.

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CITY OF MILPITAS

PAGE 02



**Pacific Gas and
Electric Company**

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005

December 16, 2003

City of Milpitas
455 E. Calaveras Bl.
Milpitas, CA 95035
Attn: Troy Fujimoto
Fax #: 408-586-3293

RE: Notice of Preparation of a Draft Environmental Impact Report
For the proposed Elmwood Residential and Commercial Development Project
City: P-EA2003-7
Location: East of I-880, s/o Sylvia Avenue, on both sides of Abel Street, and n/o Great
Mall Pkwy, Milpitas
PG&E File : 40228169-y03-MR -190

Dear Sir/ Madam,

Thank you for the opportunity to review the Notice of Preparation of a Draft
Environmental Impact Report, for the proposed Elmwood Residential and Commercial
Development Project, at East of I-880, s/o Sylvia Avenue, on both sides of Abel Street,
and n/o Great Mall Pkwy, Milpitas.

PG&E has the following comments to offer:

PG&E owns and operates gas and electric facilities which are located within and
adjacent to the proposed project. To promote the safe and reliable maintenance and
operation of utility facilities, the California Public Utilities Commission (CPUC) has
mandated specific clearance requirements between utility facilities and surrounding
objects or construction activities. To ensure compliance with these standards, project
proponents should coordinate with PG&E early in the development of their project plans.
Any proposed development plans should provide for unrestricted utility access and
prevent easement encroachments that might impair the safe and reliable maintenance
and operation of PG&E's facilities.

The developers will be responsible for the costs associated with the relocation of existing
PG&E facilities to accommodate their proposed development. Because facilities
relocation's require long lead times and are not always feasible, the developers should
be encouraged to consult with PG&E as early in their planning stages as possible.



***Pacific Gas and
Electric Company***

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005

Relocations of PG&E's electric transmission and substation facilities (50,000 volts and above) could also require formal approval from the California Public Utilities Commission. If required, this approval process could take up to two years to complete. Proponents with development plans which could affect such electric transmission facilities should be referred to PG&E for additional information and assistance in the development of their project schedules.

We would also like to note that continued development consistent with City's General Plans will have a cumulative impact on PG&E's gas and electric systems and may require on-site and off-site additions and improvements to the facilities which supply these services. Because utility facilities are operated as an integrated system, the presence of an existing gas or electric transmission or distribution facility does not necessarily mean the facility has capacity to connect new loads.

Expansion of distribution and transmission lines and related facilities is a necessary consequence of growth and development. In addition to adding new distribution feeders, the range of electric system improvements needed to accommodate growth may include upgrading existing substation and transmission line equipment, expanding existing substations to their ultimate buildout capacity, and building new substations and interconnecting transmission lines. Comparable upgrades or additions needed to accommodate additional load on the gas system could include facilities such as regulator stations, odorizer stations, valve lots, distribution and transmission lines.

We would like to recommend that environmental documents for proposed development projects include adequate evaluation of cumulative impacts to utility systems, the utility facilities needed to serve those developments and any potential environmental issues associated with extending utility service to the proposed project. This will assure the project's compliance with CEQA and reduce potential delays to the project schedule.

We also encourage the Planning Office of the City to include information about the issue of electric and magnetic fields (EMF) in environmental documents. It is PG&E's policy to share information and educate people about the issue of EMF.

Electric and Magnetic Fields (EMF) exist wherever there is electricity--in appliances, homes, schools and offices, and in power lines. There is no scientific consensus on the actual health effects of EMF exposure, but it is an issue of public concern. If you have questions about EMF, please call your local PG&E office. A package of information which includes materials from the California Department of Health Services and other groups will be sent to you upon your request.



***Pacific Gas and
Electric Company***

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005

PG&E remains committed to working with City to provide timely, reliable and cost effective gas and electric service to the planned area. We would also appreciate being copied on future correspondence regarding this subject as this project develops.

The California Constitution vests in the California Public Utilities Commission (CPUC) exclusive power and sole authority with respect to the regulation of privately owned or investor owned public utilities such as PG&E. This exclusive power extends to all aspects of the location, design, construction, maintenance and operation of public utility facilities. Nevertheless, the CPUC has provisions for regulated utilities to work closely with local governments and give due consideration to their concerns. PG&E must balance our commitment to provide due consideration to local concerns with our obligation to provide the public with a safe, reliable, cost-effective energy supply in compliance with the rules and tariffs of the CPUC.

Should you require any additional information or have any questions, please call me at (408) 282-7401.

Sincerely,

A handwritten signature in cursive script that reads "Alfred Poon".

Alfred Poon
Land Agent
South Coast Area, San Jose

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CITY OF MILPITAS

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County of Santa Clara

Roads and Airports Department
Land Development and Permits

101 Skyport Drive
San Jose, California 95110-1302
(408) 573-2430 FAX (408) 441-0275



December 10, 2003

✓ Mr. Troy Fujimoto
Planning Division
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Subject: Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR)-KB Homes
Montague Expressway

Dear Mr. Fujimoto:

Your undated NOP (which was received by us on November 19, 2003) of the Draft EIR for the proposed Elmwood Residential and Commercial Development Project has been reviewed. Our comments are as follows:

- (1) The Draft EIR of the proposed project should include a traffic analysis discussing the traffic impacts of subject development on Montague Expressway. The traffic report should include the mitigation measure and also identify the funding source of the required mitigation.
- (2) A copy of the Draft EIR should be furnished for our review and comments.

Please call me at (408) 573-2488 if you have any questions.

We thank you for the opportunity to review this matter.

Sincerely,

Ashok Vyas
Land Development Services

cc: MFG, DEC, JME, MA, WRL, file

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CITY OF MILPITAS

PAGE 06

ADAMS BROADWELL JOSEPH & CARDOZO

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rdrrury@adamsbroadwell.com

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TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO
RICHARD T. DRURY
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
SUMA PEESAPATIOF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL

December 2, 2003

City of Milpitas
Planning Division
Attn: Troy Fujimoto
455 East Calaveras Blvd.
Milpitas, CA 95035-5479

Re: Request for Mailed Notice of CEQA Actions and Public Hearings
Elmwood Residential and Commercial Development Project
File No. P-EA2003-7. Applicant: KB Home and County of Santa Clara

Dear Mr. Fujimoto:

On behalf of the Plumbers and Steamfitters Union Local 393, the International Brotherhood of Electrical Workers Local 332, and the Sheetmetal Workers Union Local 104, we are writing in response to the Notice of Preparation of an Environmental Impact Report (EIR) for the Elmwood Residential and Commercial Development Project (File No. P-EA2003-7) ("Project"). We understand that the Project applicants are KB Homes and the County of Santa Clara. We hereby request that the City of Milpitas mail us a copy of the draft EIR as soon as it is available for public review. We further request notice of any and all actions and/or hearings related to the Project, including, but not limited to the following:

- Notice of any public hearing in connection with the Project as required by California Planning and Zoning Law pursuant to Government Code Section 65091.
- Any and all notices prepared pursuant to the California Environmental Quality Act ("CEQA"), including:
 - Notices of any public hearing held pursuant to CEQA.

December 2, 2003

Page 2

- Notices of determination that an Environmental Impact Report ("EIR") is required for a project, prepared pursuant to Public Resources Code Section 21080.4.
- Notices of any scoping meeting held pursuant to Public Resources Code Section 21083.9.
- Notices of preparation of an EIR or a negative declaration for a project prepared pursuant to Public Resources Code Section 21092.
- Notices of availability of an EIR or a negative declaration for a project prepared pursuant to Public Resources Code Section 15087 of Title 14 of the California Code of Regulations.
- Notices of approval and/or determination to carry out a project, prepared pursuant to Public Resources Code Section 21152(a).
- Notices of determination that a project is exempt from CEQA, prepared pursuant to Public Resources Code Section 21152(b).

Please note that we are requesting notices of CEQA actions *and* notices of any public hearings to be held under any provision of Title 7 of the California Government Code governing California Planning and Zoning Law. This request is filed pursuant to Public Resources Code Section 21092.2 and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

In addition, we request that we receive a mailed copy of all City Planning Commission and City Council meetings and/or hearing agendas referring to or related to this Project.

Please mail notices to:

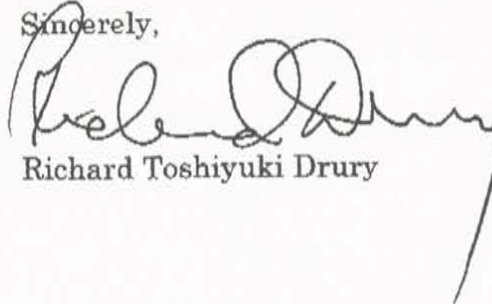
Zohary Bassett
Adams Broadwell Joseph & Cardozo
651 Gateway Boulevard, Suite 900
South San Francisco, CA 94080

December 2, 2003

Page 3

Please call my assistant, Zohary Bassett, should you have any questions.
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Drury", with a long, sweeping vertical line extending downwards from the end of the signature.

Richard Toshiyuki Drury

RTD:bh

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CITY OF MILPITAS

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Terry Tamminen
Secretary for
Environmental
Protection

California Regional Water Quality Control Board San Francisco Bay Region

Internet Address: <http://www.swrcb.ca.gov>
1515 Clay Street, Suite 1400, Oakland, California 94612
Phone (510) 622-2300 3 FAX (510) 622-2460



Arnold Schwarzenegger
Governor

Date: **DEC 01 2003**
File No. 2188.05 (BKW)

Troy Fujimoto
Planning Division
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5479

**Re: Notice of Preparation of an Environmental Impact Report for the Proposed
Elmwood Residential and Commercial Development
SCH Number 2003112102**

Dear Mr. Fujimoto:

Regional Water Quality Control Board (Water Board) staff have reviewed the *Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Proposed Elmwood Residential and Commercial Development (Project)*. The Project would redevelop a 102.62-gross acre site with commercial and residential uses. Water Board staff have the following comment on the NOP.

Comment 1

The discussion of Hydrodology in the EIR should include compliance with the National Pollutant Discharge Elimination System (NPDES) permit to discharge stormwater, held by the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). This discussion should include recent changes to Provision C.3 of SCVURPPP's NPDES permit (NPDES Permit No. CAS029718; Regional Board Order No. 01-024). Provision C.3 provides enhanced performance standards for the post-construction management of stormwater at new development and significant redevelopment projects. Although proposed projects may not result in a significant net increase in impervious surfaces, projects may still be subject to Provision C.3, as described in subsection c.i.3, *Significant redevelopment projects*; the requirements of this subsection are effective October 15, 2003. A significant redevelopment project is defined as a project on a previously developed site that results in the addition or replacement of impervious surfaces that combined total 43,560 square feet or more of impervious surface on such an already developed site. The size threshold drops from 43,560 square feet to 5,000 square feet on October 15, 2004. Significant redevelopment projects are required to design and implement stormwater treatment best management practices (BMPs) to reduce stormwater pollution to the maximum extent practicable. The EIR should reference subsection d of Provision C.3, *Numeric Sizing Criteria for Pollutant Removal Treatment Systems*, which presents the numeric sizing criteria that are to be used in the design of stormwater treatment BMPs.

City of Milpitas

- 2 -NOP Elmwood Residential and Commercial Project

Regional Board staff encourage inclusion of Provision C.3 requirements as early as possible in the planning and design process, since effective management of stormwater is highly site-specific. Evaluation and identification of cost-effective treatment options requires that the topography, soil type, and developed site layout all be considered early in the planning process. Regional Board staff recommend that the project proponents consult *Start at the Source*, a design guidance manual for storm water quality protection, for a fuller discussion of the selection of stormwater management practices. This manual provides innovative procedures for designing structures, parking lots, drainage systems, and landscaping to mitigate the impacts of stormwater runoff on receiving waters. This manual may be obtained from the Santa Clara Valley Urban Runoff Pollution Prevention Program's website (www.scvurppp.org) or by e-mailing a request to the e-mail address in the last paragraph of this letter. Many effective management and treatment options require early incorporation in the site planning process. Therefore, it is important that effective stormwater management procedures be incorporated into the early design phase of projects.

Additional innovative techniques for incorporating structural stormwater BMPs into urban design, such as infiltration planter boxes, can be found in Portland, Oregon's 2002 *Stormwater Management Manual*, which can be obtained at www.cleanrivers-pdx.org/tech_resources/2002_swmm.htm.

Regional Board staff strongly encourage the use of landscape-based stormwater treatment measures, such as biofilters and vegetated swales, to manage runoff from the site. Since landscape-based stormwater treatment measures require that some of the site surface area be set aside for their construction, the proper sizing and placement of these features should be evaluated early in the design process. Treatment controls should be sized to appropriately treat 85 to 90 percent of annual average stormwater runoff from the site. Regional Board staff would like to discourage the use of inlet filter devices for stormwater management. Filtration systems require a maintenance program that is adequate to maintain the functional integrity of the systems and to ensure that improperly maintained filtration devices do not themselves become sources of stormwater contaminants or fail to function. Regional Board staff have observed problems with the use of inlet filter inserts, since these devices require high levels of maintenance and are easily clogged by leaves or other commonly occurring debris, rendering them ineffective. Research conducted by the California Department of Transportation has demonstrated that inlet filters can be clogged by a single storm event. The study found that these devices required maintenance before and after storm events as small as 0.1 inch of rain¹. Therefore, adequate maintenance of

¹ Othmer, Friedman, Borroum and Currier, November 2001, *Performance Evaluation of Structural BMPs: Drain Inlet Inserts (Fossil Filter™ and StreamGuard™) and Oil/Water Separator*, Sacramento, Caltrans.

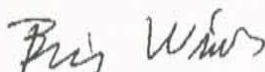
City of Milpitas

- 3 -NOP Elmwood Residential and Commercial Project

inlet filters to provide water quality treatment would be prohibitively expensive and impractically time consuming.

If you have any questions, please contact me at (510) 622-5680 or by e-mail at bkw@rb2.swrcb.ca.gov.

Sincerely,



Brian Wines
Water Resources Control Engineer
Alameda-Santa Clara Watershed Section

cc State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044
Santa Clara Valley Water Control District, Attn: Vince Stephens, Community
Projects Review Unit, 5750 Almaden Expressway, San Jose, CA 95118-3686

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CITY OF MILPITAS

JAN 15 '04 09:58AM ADAMS BROADWELL JOSEPH & CARDOZO

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ADAMS BROADWELL JOSEPH & CARDOZO

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ATTORNEYS AT LAW

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RICHARD T. DRURY
TANYA A. GULBESERIAN
MARC D. JOSEPH
SUMA PEESAPATI
KATHERINE S. POOLE

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL

January 15, 2004

VIA FACSIMILE & U.S. MAIL

City of Milpitas
Planning Division
Attn: Troy Fujimoto
455 East Calaveras Blvd.
Milpitas, CA 95035
Fax No. (408) 586-3293

Re: Public Records Act Request

Dear Mr. Fujimoto:

On behalf of the Sheet Metal Workers Union Local 104, the International Brotherhood of Electrical Workers, Local 332, and the Plumbers & Steamfitters Union, Local 393, I am writing to request a copy of all application materials for the Elmwood Residential and Commercial Development Project (file No. P-EA2003-7), including but not limited to all entitlement applications, project descriptions, and site plans. This request is made pursuant to the California Public Records Act, Government Code Section 6250 et seq.

In addition, I am writing to request mailed notice of any and all public notices, hearings and/or actions undertaken by the City of Milpitas regarding this project as required under the California Environmental Quality Act ("CEQA"), Section 21167(f).

Please send the requested application materials to our South San Francisco office and call me at (650) 589-1660 should you have any questions.

Thank you for your help with this matter.

Sincerely,



Zohary Bassett
Legal Assistant

1528p-01

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CITY OF MILPITAS

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME

POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500



December 2, 2003

Larry Klamecki, Special Projects Manager
Office of the County Executive
County of Santa Clara
70 West Hedding, 11th Floor
San Jose, CA 95110
Via fax (408) 293-1051

Dear Mr. Klamecki:

Burrowing Owl Mitigation Proposal
KB Homes Residential Development
Elmwood Property, City of Milpitas

Department of Fish and Game (DFG) personnel have reviewed the burrowing owl mitigation plan (Plan) for the above referenced project. The Notice of Preparation for the Environmental Impact Report was received by DFG on November 17, 2003. The document was prepared by Jeff Olberding & Associates and is dated October 14, 2003.

The project is to construct 721 residential units on lands currently owned by Santa Clara County and located adjacent to the Elmwood Correctional Facility. The development would occur on a 53.7-acre portion of the site. The site is known to provide habitat for burrowing owls, a State species of special concern. Historic use patterns indicate that the property supports up to eight pairs of burrowing owls and the Plan proposes to mitigate this impact.

Burrowing owls continue to experience high rates of loss of breeding and foraging habitat in the San Francisco Bay Area. Continuing development, primarily in the South Bay and East Bay areas, destroys burrowing owl nests and foraging areas, fragments of habitat, and reduces overall viability of owl populations in the area. Burrowing owls are nearing extirpation in the South Bay and many East Bay area locations. DFG has been working with many lead agencies, project proponents, and private organizations to implement habitat conservation for burrowing owl impacts and to establish burrowing owl conservation areas.

For this project, the Plan proposes passively excluding the owls currently on-site so that no direct impacts will occur. Mitigation for the loss of habitat has been proposed in the form of purchase of 52 acres near Canada Verde Creek in San Benito County.

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CITY OF MILPITAS

PAGE 14

Mr. Larry Klamecki
December 2, 2003
Page 2

DFG is conceptually agreeable to this proposal, contingent on the following conditions:

1. The mitigation area must provide current habitat for an equivalent number of burrowing owls, or show evidence that it has recently provided habitat for an equivalent number of owls. Evidence includes the presence of adequate burrows along with recent signs of occupancy, positively demonstrated by the presence of feathers, whitewash or pellets.
2. The mitigation area must be permanently conserved through fee title transfer or a conservation easement approved by DFG and supported by an endowment determined to be sufficient by DFG. The conservation easement and endowment must be in place prior to owl relocation impacts, or adequate security provided to ensure that sufficient owl habitat at an alternative location can be acquired and permanently managed.

Once owls are excluded, it will be necessary to monitor the development site to ensure it is not recolonized by burrowing owls. This is particularly true for this property as it is clearly preferred habitat for that species. As long as owls are not re-established (i.e., breeding) on the site, no additional mitigation will be necessary.

Questions regarding this letter and further coordination on these issues should be directed to Dave Johnston, Environmental Scientist, at (831) 475-9065; or Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

Sincerely,

Copy; original signed by
Robert W. Floerke
Robert W. Floerke
Regional Manager
Central Coast Region

cc: Jeff Olberding
Olberding Environmental, Inc.
3127 Vistamont Drive, Suite 100
San Jose, CA 95118

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CITY OF MILPITAS

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Santa Clara Valley
Water District

JOAN LOMBARDO, DIRECTOR
SANTA CLARA VALLEY WATER DISTRICT
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AN EQUAL OPPORTUNITY EMPLOYER

File: 25919
Lower Penitencia Creek

August 19, 2003

Mr. Troy Fujimoto
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5479

Subject: Tentative Map for the Elmwood 343-Lot Split

Dear Mr. Fujimoto:

The Santa Clara Valley Water District (District) has reviewed tentative map for the subject project, received on July 16, 2003.

Lower Penitencia Creek, a District flood facility, is located along the west side of South Abel Street.

In accordance with District Ordinance 83-2, any plans for construction over or adjacent to District facilities should be sent to us for review and issuance of a permit.

Current Federal Emergency Management Agency Flood Insurance Rate Maps (enclosed) show that the majority of the project site, west of South Abel Street, is in Zone AO, subject to flooding to a depth of 2 feet. A section of the project site east of South Abel Street is in Zone AO, subject to flooding to a depth of 1 foot, while the remainder of that project site is in Zone X, an area subject to less than 1 foot of flooding in the event of a 1 percent flood. To comply with federal flood insurance regulations, the lowest floor and the highest adjacent grade of any proposed building must be above the 1 percent water surface elevation. We recommend the lowest floor be a minimum of 2 feet above the 1 percent water surface elevation.

There should be no overbank drainage from the developed portions of the site into the creek. Storm water runoff should be collected and distributed to the city's storm drain system. If an outfall into the creek is needed, the number of outfalls should be minimized and designed in accordance with District guide sheets.

In addition, the proposed development within the existing floodplain should not increase the 100-year water surface elevation on surrounding properties nor should it increase existing flooding. The site grades must be designed to allow for the passage and storage of flood water within the site. A floodplain analysis will need to be prepared to delineate the postdevelopment floodplain depth and lateral extent.



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CITY OF MILPITAS

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To prevent pollutants from construction activity, including sediments, from reaching Lower Penitencia Creek, please follow the Santa Clara Urban Runoff Pollution Prevention Program's recommended Best Management Practices for construction activities, as contained in "Blueprint for a Clean Bay," and the "California Storm Water Best Management Practice Handbook for Construction."

Postconstruction water quality mitigation needs to be implemented. The design of the project area should incorporate water quality mitigation measures such as those found in the "Start at the Source-Design Guidance Manual for Stormwater Quality Protection," prepared for the Bay Area Stormwater Management Agencies Association.

For sites greater than 1 acre, the developer must file a Notice of Intent to comply with the State's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Construction Activity with the State Water Resources Control Board.

District records show four wells on the sites. In accordance with the District Ordinance 90-1, the owner should show any existing well(s) on the plans. The well(s) should be properly maintained or abandoned in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or abandonment of any wells.

When available, please submit the associated environmental documents for our review and comment.

Please reference File No. 25919 on further correspondence regarding the project.

Should you have any questions, please give me a call at (408) 265-2607, extension 2494, or e-mail me at THipol@valleywater.org.

Sincerely,



Theodore Hipol
Assistant Engineer
Community Projects Review Unit

Enclosures: Federal Emergency Management Agency Map
cc: S. Tippetts, S. Yung, T. Hipol, M. Klemencic, C. Fredrickson, File (2)
th:fd
0818e-pl.doc



**Pacific Gas and
Electric Company**

August 12, 2003

111 Almaden Boulevard
P.O. Box 15005
San Jose, CA 95115-0005

**City of Milpitas
455 E. Calaveras Bl.
Milpitas, CA 95035
Attn: Troy Fujimoto
Fax #: 408-586-3293**

**RE: Review of Major Tentative Map- Elmwood
Proposed a 343-Lot Split, plan dated June 2003
Drawn by Ruggeri-Jensen-Azar & Associates
NW corner of Abel Street and Great Mall Parkway
And East of Abel St. at NE corner of Curtis Ave. and Abel Street, Milpitas
PG&E file: 40228169-y03-MR-106**

Dear Sir / Madam,

Thank you for the opportunity to review the subject map. PG&E has no objection to the map.

PG&E owns and operates a variety of gas and electric facilities which may be located within the proposed project boundaries. Project proponents should coordinate with PG&E early in the development of their project plans to promote the safe and reliable maintenance and operation of existing utility facilities. Any proposed development plans should provide for unrestricted utility access and prevent interference with PG&E easements.

Activities which may impact our facilities include, but are not limited to, permanent/temporary changes in grade over or under our facilities, construction of structures within or adjacent to PG&E's easements, and planting of certain types of vegetation over, under, or adjacent to our facilities.

The installation of new gas and electric facilities and/or the relocation of existing PG&E facilities will be performed in accordance with common law or Rules and Tariffs as authorized by the California Public Utilities Commission.

Please contact me at (408)282-7401 if you have any questions regarding our comments.

Sincerely,

A handwritten signature in cursive script that reads "Alfred Poon".

**Alfred Poon- Land Agent
Corporate Real Estate
South Coast Area- San Jose**